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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|---|---|---|---|
| 09/456,603 | 12/08/1999 | Robert Walter Dmitroca | 10981247-1 | 6669 |

22878 7590 02/24/2004

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|---|---|
| WILLETT, STEPHAN F | |
| **ART UNIT** | **PAPER NUMBER** |
| 2141 | 15 |

DATE MAILED: 02/24/2004

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**BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Paper No. 15

Application Number: 09/456,603
Filing Date: December 08, 1999
Appellant(s): DMITROCA, ROBERT WALTER

Michael Papalas
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 12/24/03

*(1) Real Party in Interest*

Examiner agrees with the statement identifying the real party in interest is contained in the brief.

*(2) Related Appeals and Interferences*

Examiner agrees with the statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

*(3) Status of Claims*

Examiner agrees with the statement of the status of the claims contained in the brief is correct.

*(4) Status of Amendments After Final*

Examiner agrees with the appellant's statement of the status of amendments after final rejection contained in the brief is correct. The amendment to claim 17 does not change the scope of the claims or the issues on appeal.

*(5) Summary of Invention*

Examiner agrees with the summary of invention contained in the brief is correct.

*(6) Issues*

Examiner agrees with the appellant's statement of the issues in the brief is correct.

*(7) Grouping of Claims*

Examiner agrees with the appellant's grouping of the claims.

*(8) Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

*(9) Prior Art of Record*

The following is a listing of the prior art of record relied upon in the rejection of claims under appeal.

| | | |
|---|---|---|
| 5,226,118 | Baker et al. | 07-1993 |
| 6,321,264 | Fletcher et al | 11-2001 |
| 5,883,924 | Siu et al. | 03-1999 |

*(10) Grounds of Rejection*

*Claim Rejections - 35 USC □ 102*

1. The following is a quotation of the appropriate paragraphs of 35 U. S.C. 102(e) that form the basis for the rejections under this section made in this Office action:

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371□ of this title before the invention thereof by the applicant for patent.

2. Claims 1-4, 12-14 are rejected under 35 U.S.C. 102(e) as being anticipated by Baker et al. with Patent Number 5,226,118.

3. Regarding claim(s) 1, 12, Baker teaches a data analysis system. Baker teaches receiving a data value, col. 5, lines 55-57, and 61-62. Baker teaches determining the data is within a range, col. 7, lines 14-18 and col. 6, lines 13-19. Baker teaches incrementing a count or number if data is within a certain range, therefore incrementing the number in the bin, as in a histogram when the height of bar in a bar graph in incremented for each number within the bar's range of values, col. 8, lines 41-43, 24-25, 28-29 wherein a parameter is data and set is range, col. 12, lines 12-14 as is "scales, axis definitions" to define what ranges are displayed. Baker teaches storing the data in an array even if it is outside the range, col. 11, lines 38-42 and note the difference in the displays in Figures 21 and 22 when data is out of the displayed region. Baker teaches scaling the range or portions of values to within the data set even if the data is outside the current computed or displayed data set, col. 14, lines 18-26 and col. 6, lines 43-48 for displayed data and col. 6, lines 26-27 and col. 8, lines 43-48 for computed data.

4. Regarding claims 2, Baker teaches scaling all data received, col. 12, lines 11-14.

5. Regarding claims 3-4, 13-14, Baker teaches formatting the data for a GUI, col. 13, lines 32-36.

***Claim Rejections - 35 USC 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claims 5, 7, 15, 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baker et al. with Patent Number 5,226,118 in view of Fletcher et al. with Patent Number 6,321,264.

8. Regarding claim(s) 5, 15, Baker teaches a data analysis system. Baker teaches the invention in the above claim(s) except for explicitly teaching using data that consists of network delay times for packets. In that Baker operates to manipulate data sets, the artisan would have looked to the database arts for details of implementing data manipulation and data displays. In that art, Fletcher, a related data display system teaches "a data packet takes a measurable amount of time to travel from client computer system to server", col. 8, lines 17-19 in order to create usable data. Fletcher specifically teaches a "data table is used to store entries consisting of the time difference between these time-stamps", col. 9, lines 49-51. Displaying a range of values that consist of time delays for packet transport is taught and inherently said data can be generated with a ping command. Further, Fletcher suggests "display device of Fig. 2 utilized with client computer", col. 7, lines 7-8 will display said generated data. The motivation to incorporate data consisting of time delays insures that relevant data is displayed. Thus, it would have been obvious to one of ordinary skill in the art to incorporate various time delay data as taught in Fletcher into the data system described in the Baker combination because Baker operates with graphical data and Fletcher suggests that said data can be displayed on a GUI. Therefore, by the above rational, the above claim(s) are rejected.

9. Regarding claims 7, 17, Baker teaches recalculating based on determined parameters, col. 14, lines 61-62.

10. Claims 6, 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baker et al. with Patent Number 5,226,118 in view of Siu et al. with Patent Number 5,883,924.

11. Regarding claim(s) 6, 16, Baker teaches a data analysis system. Baker teaches the invention in the above claim(s) except for explicitly teaching determining jitter from measured data. In that Baker operates to manipulate data sets, the artisan would have looked to the database arts for details of implementing data manipulation and data displays. In that art, Siu, a related data display system teaches "the user may specify the histogram range", col. 7, lines 3-4 in order to create usable data. Siu specifically teaches "each bin in the histogram is defined by a range of PCR jitter", col. 7, lines 2-3. Displaying a range of values that consist of jitter for packet transport is taught and inherently said data can be generated with a ping command. Further, Siu suggests "bin boundaries are calculated from the range", col. 7, lines 4-5 to display and generate data. The motivation to incorporate data consisting of jitter insures that relevant data is displayed. Thus, it would have been obvious to one of ordinary skill in the art to incorporate various jitter data as taught in Siu into the data system described in the Baker combination because Baker operates with graphical data and Siu suggests that said jitter data can be displayed on a GUI. Therefore, by the above rational, the above claim(s) are rejected.

***(11) Response to Argument***

12. Applicant suggests this "does not teach scaling the current range and size of portions, if the data value is not within the current range", Paper No. 12, 14, Page 8, 6, lines 28-29, 19-24, respectively. First, the present claim language simply creates is histogram or bar graph that

adjusts ranges for each bar on the x-axis based on the data values input, thus depending on the number of values that fall within the range the bin or bar is incremented so the height of bar increases on the y-axis with more data values or when the range is increased since more values will fall in a large range. Thus, note the appellant's section V. Summary of Invention second paragraph discusses these same aspects, except the applicant then adds the computation or display (which one is unclear) "must be made quickly", but concludes that "software is too slow". However, such apparatus and methods to achieve such broad limitations are not in the present claims. As further clarified above, and based on the breadth of the claim language, there are two views of automatic scaling taught in Baker. First, display scaling is taught at col. 14, lines 18-26 and col. 6, lines 43-48 and computational scaling at col. 6, lines 26-27 and col. 8, lines 43-48 both in Baker. These scaling steps are inherent in displaying any GUI display of a graph, especially when "the user need only be able to identify and select data points of interest", col. 7, lines 15-16 in Baker and a graph or computation will be scaled to the range of points selected or programmed by the user. The references should not be read in a vacuum, the teachings are not mutually exclusive, and must be taken in context of what was reasonable based on the subject matter as a whole as would have been understood at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains. The clear description in the reference is not obfuscated by the numerous other suggested usages of said description in the reference. Applicant suggests "the Examiner has failed to provide a basis in fact and/or technical reasoning to support such a determination", Paper No. 14, Page 7, lines 25-26. However, the examiner has repeatedly pointed to display scaling as taught at col. 14, lines 18-26 and col. 6, lines 43-48 and computational scaling at col. 6, lines 26-27 and col. 8, lines

43-48 both in Baker. In addition, implicitly, impliedly and inferentially various displays and scales are taught and language identical or verbatim is not required in a rejection. Note that reasonable "inferences", and "common sense" may be considered in formulating rejections. Specifically, *In re Preda*, 401 F.2d 825, 159 USPQ 342, 344 (CCPA 1968) states "in considering the disclosure of a reference, it is proper to take into account not only specific teachings of the reference but also the inferences which one skilled in the art would reasonably be expected to draw therefrom." Also, *In re Bozek*, 416 F.2d 738, 163 USPQ 545, 549 (CCPA 1969) states that obviousness may be concluded from "common knowledge and common sense of the person of ordinary skill in the art without any specific hint or suggestion in a particular reference". Additionally, see *In re Gauerke*, 24 CCPA 725, 86 F.2d 330, 31 USPQ 330, 333 (CCPA 1936), and *In re Libby*, 45 CCPA 944, 255 F.2d 412, 118 USPQ 94, 96 (CCPA 1958), and *In re Jacoby*, 309 F.2d 738, 125 USPQ 317, 319 (CCPA 1962), and *In re Wiggins*, 488 F.2d 538, 543, 1979 USPQ 421, 424 (CCPA 1973). Thus, Applicant's arguments can not be held as persuasive regarding patentability.

13. Applicant argues the motivation to combine "does not provide any desirability for such a combination", Paper No. 14, Page 9, lines 14-15. First, Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the cited portions of the references and relevant portions of the reference and as they relate to the examiner's response. In any event, Fletcher, a related data display system teaches "display device of Fig. 2 utilized with client computer", col. 7, lines 7-8 will

display said generated data, such as time delays and jitter, col. 7, lines 2-3 in Siu, while Baker "stores measurement data obtained from a multiplicity of distinct predefined processes", col. 3, lines 13-14, both of which obviously are to display relevant data in a known display such as a histogram. Thus, Applicant's arguments can not be held as persuasive regarding patentability.

14. Thus, the prior art, as applied, fully suggest and teaches the limitations disclosed and claimed by the Appellant and Appellant's arguments cannot be held persuasive regarding patentability with regard to these limitations.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Patent Examiner

Art Unit 2141

2/20/04

RUPAL DHARIA
SUPERVISORY PATENT EXAMINER

Conferees:

Le Luu

Kenneth Coulter